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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,035	04/02/2004	Rudland Edward Ingles	RISH/04	9299
29140	7590	04/21/2006	EXAMINER	
DAVID W. WONG			DEL SOLE, JOSEPH S	
46 WILLOWBROOK ROAD			ART UNIT	
THORNHILL, ON L3T 4W9			PAPER NUMBER	
CANADA			1722	

DATE MAILED: 04/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/816,035

**Applicant(s)**

INGLES, RUDLAND EDWARD

**Examiner**

Joseph S. Del Sole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: **a)** at page 1, line 12 "An wooden" should be changed to --A wooden--; **b)** page 3, line 22 is awkward because reference numeral 16 is being used to refer to a reinforcing brace, however reference numeral 16 was already used in line 21 to represent "the bottom end"; and **c)** the grammar is incorrect in the paragraph starting at line 6 of page 6 particularly "to facilitate the mounted of the dough container 23".

Appropriate correction is required.

### ***Claim Objections***

2. Claim 8 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 8 does not further limit because the plate as claimed in claim 1 "having extrusion openings of a selected configuration formed therein" covers the same breadth as "a selected configuration of openings formed therein adapted for making string hoppers of various selected shapes".

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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4. Claim 8 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 8 sets forth that a single plate has a configuration for making various selected shapes. The specification sets for that a single plate makes a single configuration, and that a replacement plate is necessary for a secondary configuration. For examination purposes, the claim is interpreted to read only on a plate capable of forming a configuration.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Dungan (1,607,880).

Dungan (1,607,880) et al teach a shaping apparatus having a cylindrical dough container (Figs 1-3, #s 16-18) removably mounted in a frame (Figs 1-3, #s 16-17), the container having a cylindrical well with a shoulder (Figs 1-3, #17) having a smaller diameter than the well and formed at a bottom opening therein (Fig 1); an extrusion plate (Figs 1-3, #18) located within the well and resting on the shoulder, the plate having extrusion openings (Figs 1-3) of a selected configuration formed therein, a piston (Fig 1, #26) mounted on a vertical rod (Fig 1, #30) extending slidably in a vertical manner through a vertical channel in a guide block mounted on the frame, said rod having an upper end pivotally mounted to a front end of a lever arm (Fig 1, #27), the piston

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adapted to engage slidably within the well (Fig 1); an inverted t-shaped pivot block (Fig 1, between #s 23 and 29) rotatably mounted at a top portion of the frame, the pivot block having a horizontal rod (Fig 1, above #23) with a pivot arm (Fig 1, at #29) extending perpendicular to a middle location therein, the pivot arm having an upper free end pivotally mounted to an end of a lever arm (Fig 1, between #s 28 and 29); an inverted U-shaped bracket (Fig 1, at #28) formed at a lower surface of a front end of the lever arm, and the upper end of the vertical rod being pivotally mounted to the front end of the U-shaped bracket (Fig 1);

an elongated handle rod mounted at a front end of the lever arm (Fig 1) and operative for pivoting the lever arm to move the piston slidably up and down the well of the container for extruding (Fig 1);

the frame includes a front extend portion having a lower edge spaced from a supporting surface whereon the machine is resting, a horizontal support plate located at the lower edge of the extension portion, a mounting opening formed in the support plate and adapted to engage with a lower portion of the container for mounting the container to the frame (Fig 1).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of Masuzawa (4,465,452), Curry (2,351,493) and Baccellieri (1,639,791) in view of any of Federighi et al (2,219,889), Comstock (1,757,447), Mieszczak (4,092,205), Liddle (805,566) and Evers (268,088).

The prior art primary references teach a shaping apparatus having a cylindrical container (Masuzawa: Fig 1, #15 and 16; Curry: Fig 1, #14; Baccellieri: Fig 6, #1) removably mounted in a frame (Masuzawa: Fig 1, #6; Curry: Fig 1, #s 20-24; Baccellieri: Fig 6, #11), the container having a cylindrical well with a shoulder (Masuzawa: Fig 1, #6; Curry: Fig 1, at #s 88 and 90; Baccellieri: Fig 6, formed by #s 2 and 5) having a smaller diameter than the well and formed at a bottom opening therein (Masuzawa: Fig 1; Curry: Fig 1; Baccellieri: Fig 6); an extrusion plate (Masuzawa: Fig 1, #17; Curry: Fig 1, #84; Baccellieri: Fig 6, #6) located within the well and resting on the shoulder, the plate having extrusion openings (Masuzawa: Fig 1, #17a; Curry: Fig 1, #86; Baccellieri: Fig 6) of a selected configuration formed therein;

a piston (Masuzawa: Fig 1, #11a; Curry: Fig. 1, #s 40 and 42; Baccellieri: Fig 6, #14) mounted on a vertical rod (Masuzawa: Fig 1, #11; Curry: Fig 1, #44; Baccellieri:

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Fig 6, #15) extending slidably in a vertical manner through a vertical channel in a guide block mounted on the frame, the piston adapted to engage slidably within the well (Masuzawa: Figs 1-3; Curry: Fig 1; Baccellieri: Fig 6);

the frame includes a front extend portion (Masuzawa: Fig 1, #5; Curry: Fig 1, #10; Baccellieri: Fig 6, the outer most portion of #2) having a lower edge spaced from a supporting surface whereon the machine is resting, a horizontal support plate located at the lower edge of the extension portion, a mounting opening (Masuzawa: Fig 1, #5a; Curry: Figs 1-5, #s 10 and 12; Baccellieri : Fig 6) formed in the support plate and adapted to engage with a lower portion of the container for mounting the container to the frame (Masuzawa: Figs 1-3; Curry: Figs 1-5; Baccellieri: Fig 6).

The prior art primary references fail to teach said rod having an upper end pivotally mounted to a front end of a lever arm, an inverted t-shaped pivot block rotatably mounted at a top portion of the frame, the pivot block having a horizontal rod with a pivot arm extending perpendicular to a middle location therein, the pivot arm having an upper free end pivotally mounted to an end of a lever arm; an inverted U-shaped bracket formed at a lower surface of a front end of the lever arm, and the upper end of the vertical rod being pivotally mounted to the front end of the U-shaped bracket; and an elongated handle rod mounted at a front end of the lever arm and operative for pivoting the lever arm to move the piston slidably up and down the well of the container for extruding.

The secondary references teach said rod having an upper end pivotally mounted to a front end of a lever arm (Federighi: Fig 1, #19; Comstock: Fig 1, #5; Mieszczak: Fig

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1, #33; Liddle: Fig 1, #17; Evers: Fig 1, D), an inverted t-shaped pivot block (Federighi: Fig 1, at the bottom of #20; Comstock: Fig 1, at #53; Mieszczaak: Fig 1, at #29; Liddle: Fig 1, #15; Evers: Fig 1) rotatably mounted at a top portion of the frame, the pivot block having a horizontal rod (Federighi: Fig 1; Comstock: Fig 1, #53; Mieszczaak: Fig 1, #29; Liddle: Fig 1, the connection between #s 15 and 16; Evers: Fig 1) with a pivot arm (Federighi: Fig 1, #20; Comstock: Fig 1, #51; Mieszczaak: Fig 1, the arm connected at #s 29 and 31; Liddle: Fig 1, #16; Evers: Fig 1) extending perpendicular to a middle location therein, the pivot arm having an upper free end pivotally mounted to an end of a lever arm (Federighi: Fig 1, the connection between #s 19 and 20; Comstock: Fig 1, at #52; Mieszczaak: Fig 1, at #31; Liddle: Fig 1, between #s 16 and 17; Evers: Fig 1); an inverted U-shaped bracket (Federighi: Fig 1, #5a; Comstock: Fig 1, #44; Mieszczaak: Fig 1, at #32; Liddle: Fig 1, between #s 5 and 18; Evers: Fig 1) formed at a lower surface of a front end of the lever arm, and the upper end of the vertical rod being pivotally mounted to the front end of the U-shaped bracket (Federighi: Fig 1; Comstock: Fig 1; Mieszczaak: Fig 1; Liddle: Fig 1; Evers); an elongated handle rod mounted at a front end of the lever arm (Federighi: Fig 1, #19; Comstock: Fig 1, #5; Mieszczaak: Fig 1, #3; Liddle: Fig 1, #17; Evers: Fig 1) and operative for pivoting the lever arm to move the piston slidably up and down (Federighi: Fig 1; Comstock: Fig 1; Mieszczaak: Fig 1; Liddle: Fig 1; Evers: Fig 1) for the purpose of controlling a piston vertically and minimizing the force necessary for the motion.

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the inventions of the primary references with



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the lever arm/ pivot arm mechanism taught by the secondary references because such a mechanism is a well known mechanism that minimizes the pressure/ force necessary to create a downward movement of a piston.

9. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over any of Masuzawa (4,465,452), Curry (2,351,493) and Baccellieri (1,639,791) in view of any of Federighi et al (2,219,889), Comstock (1,757,447), Mieszczak (4,092,205), Liddle (805,566) and Evers (268,088) and further in view of CA2296024.

The cited prior art teaches the invention as discussed above.

The primary references fail to teach a holding mechanism for the container including two latching openings formed in two side plates of the frame, the container having an outer circular ridge formed between an upper portion and the lower portion therein, two tabs formed at two directly opposite sides of the ridge and adapted to engage with the latching openings of the side plates for maintaining the container securely mounted in a vertical manner in the frame.

CA2296024 teaches a holding mechanism for the container including two latching openings formed in two side plates of the frame, the container having an outer circular ridge formed between an upper portion and the lower portion therein, two tabs formed at two directly opposite sides of the ridge and adapted to engage with the latching openings of the side plates (Figs 2A and 2B) for the purpose maintaining the container securely mounted in a vertical manner in the frame.

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of the cited references with the

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container tab and frame latch openings as taught by CA2296024 because such enables easy table-top removal and attachment of a container of a piston device used by individuals for shaping.

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over any of Masuzawa (4,465,452), Curry (2,351,493) and Baccellieri (1,639,791) in view of any of Federighi et al (2,219,889), Comstock (1,757,447), Mieszczak (4,092,205), Liddle (805,566), Evers (268,088) and CA2296024 and further in view of Bodkin (2,617,169) and Eastman (6,134,906).

The cited prior art teaches the invention as discussed above.

The primary references fail to teach the container being made of ABS plastic and a handle formed on an outer side wall of the container.

Eastman teaches the use of ABS plastic as the plastic material for a food containing plastic (col 3, lines 29-34) for the purpose of qualifying the container as food grade (col 3, line 30). Bodkin teaches a handle (Fig 1, #8) formed on the outside wall of the container for the purpose of easily changing the position of the container (col 4, lines 7-25).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of the cited references with the material being ABS plastic and the container having handles as taught by Eastman and Bodkin respectfully because ABS plastic is suitable for food and handles enable better handling of a container.

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11. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of Masuzawa (4,465,452), Curry (2,351,493) and Baccellieri (1,639,791) in view of any of Federighi et al (2,219,889), Comstock (1,757,447), Mieszczak (4,092,205), Liddle (805,566), Evers (268,088), CA2296024, Bodkin (2,617,169) and Eastman (6,134,906) and further in view of Hanson et al (4,496,510).

The cited prior art teaches the invention as discussed above. Additionally, CA2296024 teaches the limitation of claim 7, namely a steam tray adapted to locate below the front extension portion of the frame for receiving the material extruded from the container for the purpose of allowing, and because it allows, the apparatus to be used as a string hopper.

The primary references fail to teach a base plate mounted to lower edges of the side plate of the frame, a C-clamp adapted for engaging with the base plate and the supporting surface for securely mounting the machine on a supporting surfaces.

Hanson et al teach that it is notoriously well known to use a C-clamp (Fig 1, #18) for the purpose of securely attaching a machine to a surface (col 2, lines 8-18).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of the prior art with a C-clamp so that the machines could be made portable, and sized small enough, but also be securely attached to a separate surface.

#### ***References of Interest***

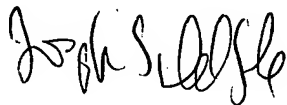
12. Gianelo (4,475,449) and Shatlia et al (4,060,367) are cited of interest to show the state of the art.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph S. Del Sole whose telephone number is (571) 272-1130. The examiner can normally be reached on M-F 8:30 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph S. Del Sole

4/19/06